

§ 58-13-20. Exception.

(a) This Article does not apply to those reserve assets of an insurer that are held, deposited, pledged, hypothecated, or otherwise encumbered as provided in this section to secure, offset, protect, or meet those policyholder-related liabilities of the insurer that are established, incurred, or required under the provisions of a reinsurance agreement whereby the insurer has reinsured the insurance policy liabilities of a ceding insurer, provided:

- (1) The ceding insurer and the reinsurer are both licensed to transact business in this State;
- (2) Pursuant to a written agreement between the ceding insurer and the reinsurer, reserve assets substantially equal to the policyholder-related liabilities required to be established by the reinsurer on the reinsured business are either (i) deposited by or are withheld from the reinsurer and are in the custody of the ceding insurer as security for the payment of the reinsurer's obligations under the reinsurance agreement, and such assets are held subject to withdrawal by and under the separate or joint control of the ceding insurer, or (ii) deposited and held in trust account for that purpose and under those conditions with a qualified United States financial institution.

(b) The Commissioner has the right to examine any of such assets, reinsurance agreements, or deposit arrangements at any time in accordance with his authority to make examinations of insurers as conferred by other provisions of this Chapter.

(c) For purposes of subdivision (a)(2) of this section, "qualified United States financial institution" means an institution that:

- (1) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;
- (2) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and
- (3) Has been determined by either the Commissioner or the Securities Valuation Office of the NAIC to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions who serve as trustees. (1985, c. 327, s. 1; 1993, c. 504, s. 9; 2001-223, s. 13.4; 2005-215, s. 25.)